

AMENDED IN ASSEMBLY MAY 1, 2000

CALIFORNIA LEGISLATURE—1999–2000 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2240**

**Introduced by Assembly Member Bates**

February 24, 2000

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An act to amend Section 4070 of, and to add Section 4071.1 to, the Business and Professions Code, and to ~~amend~~ *add* Section ~~11164~~ *of 11164.5* to the Health and Safety Code, relating to prescriptions, ~~and making an appropriation therefor.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 2240, as amended, Bates. Prescriptions: electronic transmission.

The Controlled Substances Act regulates, among other matters, the dispensing by prescription of controlled substances, which are classified into schedules, and the Pharmacy Law regulates, among other matters, the dispensing by prescription of dangerous devices and dangerous drugs, which also include controlled substances. Existing law authorizes the electronic transmission of prescriptions for dangerous devices and dangerous drugs, other than those for a Schedule II controlled substance, which includes cocaine, opiates, and other designated substances, and requires that the prescription be reduced to writing as soon as practicable. Under existing law, the violation of these provisions is a crime.

This bill would provide that a pharmacy receiving an electronic transmission prescription is not required to reduce the prescription to writing or to hard copy form as long as the pharmacy is able to immediately produce a specified hard copy upon request and would require systems within the pharmacy's computer system to prohibit any changes to or deletions of information stored solely in electronic form unless a correction is made by or with the approval of a pharmacist. This bill would also make these provisions applicable to electronically transmitted prescriptions for controlled substances classified in Schedules II, III, IV, or V, upon the approval of the Department of Justice and the California State Board of Pharmacy ~~and would authorize the board to issue a citation and impose a fine, pursuant to other existing provisions of law, for the violation of these provisions. Because these fines would be deposited into the Pharmacy Board Contingent Fund, which is continuously appropriated, this bill would make an appropriation.~~

This bill would also authorize prescribers, ~~prescriber's~~ *prescribers'* agents, and pharmacists to electronically enter prescriptions and orders, as defined, into a pharmacy's or hospital's computer from an outside location, if permitted by the pharmacy or hospital, including, with the approval of the board and the Department of Justice, and ~~as if~~ permitted by federal law, prescriptions and orders for controlled substances classified in Schedules II, III, IV, and V.

Because the acts authorized by this bill are subject to specified requirements, the violation of which would constitute a crime, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote:  $\frac{2}{3}$ —*majority*. Appropriation: ~~yes~~—*no*. Fiscal committee: yes. State-mandated local program: yes.

*The people of the State of California do enact as follows:*

SECTION 1. It is the intention of the Legislature that pharmacies in this state have the ability to adopt new technologies involving the electronic transmission of prescriptions to reduce the occurrence of dispensing errors and to improve service to Californians. Errors in the dispensing of controlled substances pose the greatest potential of harm to patients. It is the intention of the Legislature that the California State Board of Pharmacy and the Department of Justice allow pharmacies to utilize new technologies to electronically transmit data prescriptions for controlled substances that may reduce the risk of prescription errors as soon as possible after federal law permits this practice, provided that the board and the Attorney General find there is no substantial risk of the diversion of controlled substances by the use of electronic data transmission prescriptions for these substances.

SEC. 2. Section 4070 of the Business and Professions Code is amended to read:

4070. (a) Except as provided in Section 4019 and subdivision (b), an oral or an electronic data transmission prescription as defined in subdivision (c) of Section 4040 shall as soon as practicable be reduced to writing by the pharmacist and shall be filled by, or under the direction of, the pharmacist. The pharmacist need not reduce to writing the address, telephone number, license classification, federal registry number of the prescriber or the address of the patient or patients if the information is readily retrievable in the pharmacy.

~~(b) Unless otherwise specified in Section 11164 of the~~

~~(b) Except as provided in Section 4019 and Section 11164.5 of the Health and Safety Code, a pharmacy receiving an electronic transmission prescription shall not be required to reduce that prescription to writing or to hard copy form if, for three years from the last date of furnishing pursuant to that prescription or order, the pharmacy is able, upon request by the board, to immediately produce a hard copy report that includes for~~

1 each date of dispensing of a dangerous drug or dangerous  
2 device pursuant to that prescription or order: (1) all of  
3 the information described in subparagraphs (A) to (E),  
4 inclusive, of paragraph (1) of subdivision (a) of Section  
5 4040, and (2) the name or identifier of the pharmacist  
6 who dispensed the dangerous drug or dangerous device.

7 (c) If only recorded and stored electronically, on  
8 magnetic media, or in any other computerized form, the  
9 pharmacy's computer system shall not permit the  
10 *received information or the* dangerous drug or dangerous  
11 device dispensing information required by this section to  
12 be changed, obliterated, destroyed, or disposed of, for the  
13 record maintenance period required by law; *once the*  
14 *information has been received by the pharmacy and once*  
15 the dangerous drug or dangerous device has been  
16 dispensed. Once a dangerous drug or dangerous device  
17 has been dispensed, if the previously created record is  
18 determined to be incorrect, a correcting addition may be  
19 made only by or with the approval of a pharmacist. ~~The~~  
20 *After a pharmacist enters the change or enters his or her*  
21 *approval of the change into the computer, the* resulting  
22 record shall include the correcting addition and the date  
23 it was made to the record, the identity of the person *or*  
24 *pharmacist* making the ~~correcting addition, and the~~  
25 ~~identity of the pharmacist making the correction, or, if~~  
26 ~~the correcting addition is not made by a pharmacist, the~~  
27 ~~identity of the pharmacist approving the correction.~~  
28 *correction, and the identity of the pharmacist approving*  
29 *the correction.*

30 (d) *Nothing in this section shall impair the*  
31 *requirement to have an electronically transmitted*  
32 *prescription transmitted only to the pharmacy of the*  
33 *patient's choice or to have a written prescription. This*  
34 *requirement shall not apply to orders for medications to*  
35 *be administered in an acute care hospital.*

36 SEC. 3. Section 4071.1 is added to the Business and  
37 Professions Code, to read:

38 4071.1. (a) A prescriber, a prescriber's authorized  
39 ~~agent, a pharmacist, or a person authorized by the board~~  
40 ~~to enter prescriptions when supervised by a pharmacist,~~

1 *agent, or a pharmacist* may electronically enter a  
2 prescription or an order, as defined in Section 4019, into  
3 a pharmacy's or hospital's computer from any location  
4 outside of the pharmacy or hospital with the permission  
5 of the pharmacy or hospital. For purposes of this section,  
6 a "prescriber's authorized agent" is a person licensed or  
7 ~~registered with a state agency or board in a health care~~  
8 ~~related field.~~ *under Division 2 (commencing with Section*  
9 *500).*

10 (b) Nothing in this section shall reduce the existing  
11 authority of other hospital ~~or pharmacy~~ personnel to  
12 enter medication orders or prescription orders into a  
13 ~~hospital's computer or a pharmacy's computer,~~  
14 ~~respectively.~~ *hospital's computer.*

15 (c) No dangerous drug or dangerous device shall be  
16 dispensed pursuant to a prescription that has been  
17 electronically entered into a pharmacy's computer  
18 without the prior approval of a pharmacist.

19 ~~SEC. 4. Section 11164 of the Health and Safety Code~~  
20 ~~is amended to read:~~

21 ~~11164. Except as provided in Sections 11159.2 and~~  
22 ~~11167, no person shall prescribe a controlled substance,~~  
23 ~~nor shall any person fill, compound, or dispense that~~  
24 ~~prescription unless it complies with the requirements of~~  
25 ~~this section.~~

26 ~~(a) Each written prescription for a controlled~~  
27 ~~substance classified in Schedule II shall be wholly written~~  
28 ~~in ink or indelible pencil in the handwriting of the~~  
29 ~~prescriber upon the official prescription form issued by~~  
30 ~~the Department of Justice. Each prescription shall be~~  
31 ~~prepared in triplicate, signed, and dated by the~~  
32 ~~prescriber, and shall contain the name and address of the~~  
33 ~~person for whom the controlled substance is prescribed,~~  
34 ~~the name, quantity, and strength of the controlled~~  
35 ~~substance prescribed, directions for use, and the address,~~  
36 ~~category of professional licensure, and the federal~~  
37 ~~controlled substance registration number of the~~  
38 ~~prescriber. The original and duplicate of the prescription~~  
39 ~~shall be delivered to the pharmacist filling the~~  
40 ~~prescription. The duplicate shall be retained by the~~

~~1 pharmacist and the original, properly endorsed by the  
2 pharmacist with the name and address of the pharmacy;  
3 the pharmacy's state license number, the date the  
4 prescription was filled, and the signature of the  
5 pharmacist, shall be transmitted to the Department of  
6 Justice at the end of the month in which the prescription  
7 was filled. Upon receipt of an incompletely prepared  
8 official prescription form of the Department of Justice,  
9 the pharmacist may enter on the face of the prescription  
10 the address of the patient.~~

~~11 (b) Each prescription for a controlled substance  
12 classified in Schedule III, IV, or V, except as authorized  
13 by subdivision (c), shall be subject to the following  
14 requirements:~~

~~15 (1) The prescription shall be signed and dated by the  
16 prescriber and shall contain the name of the person for  
17 whom the controlled substance is prescribed, the name  
18 and quantity of the controlled substance prescribed, and  
19 the directions for use. With respect to prescriptions for  
20 controlled substances classified in Schedules III and IV,  
21 the signature, date, and information required by this  
22 paragraph shall be wholly written in ink or indelible  
23 pencil in the handwriting of the prescriber.~~

~~24 (2) In addition, the prescription shall contain the  
25 name, address, telephone number, category of  
26 professional licensure, and federal controlled substance  
27 registration number of the prescriber. The information  
28 required by this paragraph shall be either preprinted  
29 upon the prescription blank, typewritten, rubber  
30 stamped, or printed by hand. Notwithstanding any  
31 provision in this section, the prescriber's address,  
32 telephone number, category of professional licensure, or  
33 federal controlled substances registration number need  
34 not appear on the prescription if that information is  
35 readily retrievable in the pharmacy.~~

~~36 (3) The prescription shall also contain the address of  
37 the person for whom the controlled substance is  
38 prescribed. If the prescriber does not specify this address  
39 on the prescription, the pharmacist filling the  
40 prescription or an employee acting under the direction~~

1 of the pharmacist shall write or type the address on the  
2 prescription or maintain this information in a readily  
3 retrievable form in the pharmacy.

4 (e) Any controlled substance classified in Schedule III,  
5 IV, or V may be dispensed upon an oral or electronically  
6 transmitted prescription, which shall be reduced to  
7 writing, unless exempt from this requirement pursuant to  
8 subdivision (h), by the pharmacist receiving the  
9 prescription or by any other person expressly authorized  
10 by provisions of the Business and Professions Code. The  
11 date of issue of the prescription and all the information  
12 required for a written prescription by subdivision (b)  
13 shall be included in the written record of the prescription.  
14 The pharmacist need not reduce to writing the address,  
15 telephone number, license classification, or federal  
16 registry number of the prescriber or the address of the  
17 patient if that information is readily retrievable in the  
18 pharmacy. Pursuant to the authorization of the  
19 prescriber, any employee of the prescriber on behalf of  
20 the prescriber may orally or electronically transmit a  
21 prescription for a controlled substance classified in  
22 Schedule III, IV, or V, if in these cases the written record  
23 of the prescription required by this subdivision specifies  
24 the name of the employee of the prescriber transmitting  
25 the prescription.

26 (d) The use of commonly used abbreviations shall not  
27 invalidate an otherwise valid prescription.

28 (e) Notwithstanding any provision of subdivisions (b)  
29 and (c), prescriptions for a controlled substance classified  
30 in Schedule V may be for more than one person in the  
31 same family with the same medical need.

32 (f) In addition to the prescriber's record required by  
33 Section 11190, any practitioner dispensing a controlled  
34 substance classified in Schedule II in accordance with  
35 subdivision (b) of Section 11158 shall prepare a written  
36 record thereof on the official forms issued by the  
37 Department of Justice, pursuant to Section 11161, and  
38 shall transmit the original to the Department of Justice in  
39 accordance with any rules that the department may  
40 adopt for completion and transmittal of the forms.

1     ~~(g) With the approval of the California State Board of~~  
2     ~~Pharmacy and the Department of Justice, a pharmacy or~~  
3     ~~hospital may receive electronic data transmission~~  
4     ~~prescriptions or computer entry prescriptions or orders~~  
5     ~~as specified in Section 4071.1 of the Business and~~  
6     ~~Professions Code, for controlled substances in Schedules~~  
7     ~~H, III, IV, or V if authorized by federal law or a written~~  
8     ~~exception pursuant to Section 1307.03 of Title 21 of the~~  
9     ~~Code of Federal Regulations. The California State Board~~  
10    ~~of Pharmacy shall maintain a list of all requests and~~  
11    ~~approvals granted pursuant to this subdivision.~~

12    ~~(h) If approved by the California State Board of~~  
13    ~~Pharmacy and the Department of Justice, a pharmacy or~~  
14    ~~hospital receiving an electronic transmission prescription~~  
15    ~~or a computer entry prescription or order for a controlled~~  
16    ~~substance classified in Schedule H, III, IV, or V shall not~~  
17    ~~be required to reduce that prescription or order to~~  
18    ~~writing or to hard copy form, if for three years from the~~  
19    ~~last day of dispensing that prescription, the pharmacy is~~  
20    ~~able, upon request of the board, to immediately produce~~  
21    ~~a hard copy report that includes for each date of~~  
22    ~~dispensing of a controlled substance in Schedules H, III,~~  
23    ~~IV, and V pursuant to the prescription (1) all of the~~  
24    ~~information described in subparagraphs (A) to (E),~~  
25    ~~inclusive, of paragraph: (1) of subdivision (a) of Section~~  
26    ~~4040 of the Business and Professions Code; and (2) the~~  
27    ~~name or identifier of the pharmacist who dispensed the~~  
28    ~~controlled substance.~~

29    ~~(i) If only recorded and stored electronically, on~~  
30    ~~magnetic media, or in any other computerized form, the~~  
31    ~~pharmacy's computer system shall not permit the~~  
32    ~~controlled substance dispensing information required by~~  
33    ~~this section to be changed, obliterated, destroyed, or~~  
34    ~~disposed of, for the record maintenance period required~~  
35    ~~by law, once the controlled substance has been furnished.~~  
36    ~~Once the controlled substance has been furnished, if the~~  
37    ~~previously created record is determined to be incorrect,~~  
38    ~~a correcting addition may be made only by or with the~~  
39    ~~approval of a pharmacist. The resulting record shall~~  
40    ~~include the correcting addition and the date it was made~~



1 to the record, the identity of the person making the  
2 correcting addition, and the identity of the pharmacist  
3 making the correction, or, if the correcting addition is not  
4 made by a pharmacist, the identity of the pharmacist  
5 approving the correction.

6 (j) Pursuant to Section 125.9 or 148 of the Business and  
7 Professions Code, the California State Board of Pharmacy  
8 may issue a citation and impose a fine for the failure to  
9 comply with subdivision (h) or (i).

10 (k) Nothing in this section shall be construed to  
11 exempt any pharmacy dispensing Schedule II controlled  
12 substances pursuant to electronic transmission  
13 prescriptions from existing reporting requirements.

14 SEC. 4. Section 11164.5 is added to the Health and  
15 Safety Code, to read:

16 11164.5. (a) Notwithstanding Section 11164, with the  
17 approval of the California State Board of Pharmacy and  
18 the Department of Justice, a pharmacy or hospital may  
19 receive electronic data transmission prescriptions, or  
20 computer entry prescriptions, or orders as specified in  
21 Section 4071.1 of the Business and Professions Code, for  
22 controlled substances in Schedule II, III, IV, or V if  
23 authorized by federal law. The California State Board of  
24 Pharmacy shall maintain a list of all requests and  
25 approvals granted pursuant to this subdivision.

26 (b) Notwithstanding Section 11164, if approved  
27 pursuant to subdivision (a), a pharmacy or hospital  
28 receiving an electronic transmission prescription, or a  
29 computer entry prescription, or order for a controlled  
30 substance classified in Schedule II, III, IV, or V shall not  
31 be required to reduce that prescription or order to  
32 writing or to hard copy form, if for three years from the  
33 last day of dispensing that prescription, the pharmacy is  
34 able, upon request of the board, to immediately produce  
35 a hard copy report that includes for each date of  
36 dispensing of a controlled substance in Schedules II, III,  
37 IV, and V pursuant to the prescription all of the  
38 information described in subparagraphs (A) to (E),  
39 inclusive, of paragraph (1) of subdivision (a) of Section  
40 4040 of the Business and Professions Code and the name

1 or identifier of the pharmacist who dispensed the  
2 controlled substance.

3 (c) Notwithstanding Section 11164, if only recorded  
4 and stored electronically, on magnetic media, or in any  
5 other computerized form, the pharmacy's computer  
6 system shall not permit the received information or the  
7 controlled substance dispensing information required by  
8 this section to be changed, obliterated, destroyed, or  
9 disposed of, for the record maintenance period required  
10 by law, once the information has been received by the  
11 pharmacy and once the controlled substance has been  
12 dispensed, respectively. Once the controlled substance  
13 has been dispensed, if the previously created record is  
14 determined to be incorrect, a correcting addition may be  
15 made only by or with the approval of a pharmacist. After  
16 a pharmacist enters the change or enters his or her  
17 approval of the change into the computer, the resulting  
18 record shall include the correcting addition and the date  
19 it was made to the record, the identity of the person or  
20 pharmacist making the correction, and the identity of the  
21 pharmacist approving the correction.

22 (d) Nothing in this section shall be construed to  
23 exempt any pharmacy dispensing Schedule II controlled  
24 substances pursuant to electronic transmission  
25 prescriptions from existing reporting requirements.

26 SEC. 5. No reimbursement is required by this act  
27 pursuant to Section 6 of Article XIII B of the California  
28 Constitution because the only costs that may be incurred  
29 by a local agency or school district will be incurred  
30 because this act creates a new crime or infraction,  
31 eliminates a crime or infraction, or changes the penalty  
32 for a crime or infraction, within the meaning of Section  
33 17556 of the Government Code, or changes the definition  
34 of a crime within the meaning of Section 6 of Article  
35 XIII B of the California Constitution.